

Serial No.: 10/684,277
Amdt. Dated 02/09/2005
Reply to Office Action of 08/09/2004

REMARKS/ARGUMENTS

Reconsideration of this application as amended is requested.

Claim 1 and new claims 5-7 remain in this application. Claim 1 has been amended.

Claims 2-4 have been canceled. Claims 5-7 are new.

Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

Claim Objections

Claim 1 was objected to because it appeared that "the door or doors" should be replaced with --said at least one of the doors--. Applicant has made appropriate correction by amending claim 1 as suggested and required by the Examiner.

Claim Rejections - 35 USC § 103

Claims 1-4 were rejected under 35 U.S.C. 103(a) as being unpatentable over Galvis (U.S. Patent No. 5,380,054) in view of Laughlin (U.S. Patent No. 4,848,071).

Applicant respectfully traverses the Examiner 35 U.S.C. 102(c) rejection of claim 1 as being unpatentable over Galvis in view of Laughlin. Claims 2-4 are canceled.

An evaluation of the subject matter as a whole and the differences between the invention and prior art shows that applicant's invention is non-obvious. In evaluating obviousness it is necessary to consider all the subject matter defined in the claim under consideration, not part or most of it. Applicant respectfully discusses the subject matter of the claimed invention and

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contrasts the claimed invention with Galvis in view of the comparison made by the Examiner.

Contrasting the claimed invention with Galvis illustrates that several limitations of the claims are not considered by the examiner and not disclosed by Galvis. Thus, applicant traverses on an initial ground that only part of the subject matter defined in claim 1 has been considered. Further, not all of the limitations of the claims are taught by Galvis in view of Laughlin.

In making the rejection, the Examiner states that Galvis discloses a basket tool assembly. Applicant submits there is a great contrast between the basket tool assembly of Galvis and the invention. Galvis does not disclose a basket tool assembly equivalent to or having all of the features claimed by applicant. Applicants have specified in the limitations of claim 1 that the basket tool assembly includes a gatherer head comprised of wire bails and doors ... separated intermediately by the gatherer head to define a storage component. Examiner states that Galvis shows doors biased in a closed position, referring to figures 5 and 6. Upon review of figures 5 and 6, the spring 59 is shown in figure 5 as compressed when the doors 80 are in the closed position. "The release of the trigger member to travel forwardly allows the compressed spring to drive the plunger forwardly and open the clamshell buckets." (Col. 2, Ln 26-28) Thus, the spring causes the doors to be biased in an open position when relaxed and in its natural posture. The bias taught by Galvis directly opposes the teaching of applicant. Applicant's traverse and state that Galvis does not teach a basket tool assembly with a gatherer head comprised of wire bails or having doors biased in a closed position.

The Examiner states that Galvis discloses a control linkage 46 being attached to the doors (via 51). Upon review the Galvis disclosure, Applicant submits that Galvis does not disclose a control linkage. Applicants have specified in the limitations of claim 1 that the control linkage is

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attached to at least one of the doors. The item 46 represents a rod that could be considered a control device, but could not be considered a control linkage, as the rod is not attached to the doors. The rod 46 operates to close the clamshell members of Galvis via a plunger head portion 51 having cam surfaces that contact surfaces 66 as the plunger travels rearward, pulling the clamshell bucket members 80 closed. Galvis does not teach an attached control linkage capable of pulling a door to an open position. With respect to Galvis, a pulling motion closes the clamshell bucket members.

The Examiner states that it would have been obvious to provide the gatherer of Galvis with the bails as taught by Laughlin in order to provide a gatherer having greater operation range, use and effectiveness. Applicant's invention operates effectively as specified in the limitations of claim 1 to use the trigger to pull the control linkage and open said at least one of the doors that are attached to the control linkage. As discussed above, Galvis does not provide a control linkage as claimed by applicant or the attachment thereof. Moreover, Galvis does not teach the use of the trigger to pull and open the door to release contents of the storage component.

Galvis, when considered as a whole teaches away from the applicant's claimed invention. Galvis teaches the use of the trigger of the handle assembly in an opposite manner. When the trigger in Galvis is finger actuated, the jaws or clamshell members are closed to grip items on the ground or close the clamshell to form an enclosure. "Since the trigger member is connected to the rear end of the rod, the rod pulls the plunger rearwardly causing the buckets or jaw-like members to be closed toward each other." (Col. 2, Ln 50-53) Whereas, in the present invention, the trigger must be arranged in a manner to use the trigger to open a door for releasing material.

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The trigger and rod combination in Galvis serve a purpose directly divergent to applicant's requirements for a useful device. Galvis only teaches the use of a plunger mechanism to close jaws or clamshell members when actuating the trigger. As discussed before, Galvis does not teach or suggest features of applicant's invention, such as a control linkage, an attached linkage to a door or any other means for actuating the trigger to open a door. Galvis could not be applied to applicant's claimed hand-operated gatherer without either changing the purpose of the features taught by Galvis, re-engineering, and removing various parts. Such re-engineering and removal of parts is not suggested or taught by Galvis.

There is no supporting teaching in the prior art for the proposed combination. Because the prior art does not provide a teaching, suggestion or incentive supporting the combination proposed by the Examiner, the rejection should be reversed. Hindsight must be avoided in combining the reference structures. In this case, nothing in Galvis would teach, suggest or provided incentive for combining the wire bails of Laughlin with the teachings of Galvis. The wire bails of Laughlin would interfere with the operation of the trigger and rod of Galvis to close clamshell members or operate gripping members. The wire bails of Laughlin would prevent the clamshell members of Galvis from operating when the plunger and head portion traveled rearward upon pulling the trigger. The wire bails of Laughlin would prevent the pulling of the trigger in Galvis and locking thereof into a rear position as taught by Galvis (Col. 1, Ln 61), as the bails would interfere with the closing of the clamshell members. Galvis did not provide any motivation for combining the structure of his device with wire bails.

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Applicant has attached a Rule 132 Declaration with respect to the secondary considerations of commercial success and long-felt need. The evidence presented relates to the invention subject to applicant's claims. Applicant's solution to the long-felt problem of gathering pecans and removing them from the gathering device appears to carry with it the reward of commercial success. For this reason, applicant has attached the Rule 132 Declaration as evidence demonstrating immediate displacement of prior devices and evidencing the strong likelihood of outstanding future sales. Also, the immediate results shown by the evidence demonstrates a willingness of customers to pay a premium for the invention as reflected by the payment of higher prices by customers.

New claims 5-7

Claim 5 has been added to claim an allowable embodiment of the invention and includes limitations discussed above. Applicant believes that these following limitations, as well as others, make the claim allowable: a basket tool assembly having ... a door biased in a closed position, ... a gatherer head comprised of wire bails; control linkage attached at the handle assembly to the trigger so as to pull the control linkage and cause the door to open away from the gatherer head to create an opening between the gatherer head and the door.

Claim 6 depends upon claim 5, and, therefore is believed to be allowable.

Claim 7 depends upon claim 1, and, therefore is believed to be allowable in view of the above remarks believed to overcome the Section 103 rejection of claim 1.

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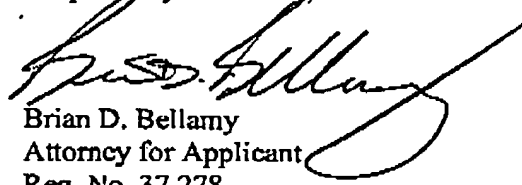
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For the foregoing reasons, applicant respectfully requests allowance of the remaining claims.

An additional fee of \$510 is due for late filing of the response within the 6th month.

Applicant has attached an information disclosure statement and additional fee of \$180 for filing.

Respectfully submitted,



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Date: February 9, 2005

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Incl: PTO Form 2038
PTO/SB/17 Fee Transmittal
Information Disclosure Statement and reference
Rule 132 Declaration
Exhibit A
Certificate of Transmission
Facsimile cover sheet

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CERTIFICATE OF TRANSMISSION - 37 C.F.R. § 1.8

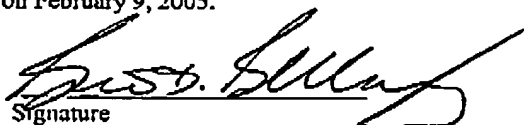
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Fax number (703) 872-9306

I hereby certify that this Amendment/Remarks to the Office action dated August 9, 2004 is being facsimile transmitted to the United States Patent and Trademark Office on February 9, 2005.

Brian D. Bellamy

Name of person signing Certificate


Signature2-9-2005
Date of Signature